IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SALES TAX APPLICATION NO. 5 OF 2006

IN

REFERENCE APPLICATION NO. 127 OF 2001

The Commissioner of Sales Tax ... Applicant
Maharashtra State, Mumbai

V/s.

Virema Laminates Pvt. Ltd. ... Respondent

Mr. Vinay Sonpal, AGP for the applicant.

Mr. P.S. Jaitely for the respondent.

CORAM : H.L. GOKHALE &
V.R. KINGAONKAR,JJ.

DATED : 21st July, 2006

P.C.

. Heard Mr. Sonpal in support of this application. Mr. Jaitley appears for the respondents.

2. The application seeks a reference on certain points which are sought to be raised therein. The grievance is made with respect to the order dated 5th May, 2005 passed by the Sales Tax Tribunal. The question before the Tribunal was, as to whether various processes conducted by the respondent amounted to manufacture. The respondent was purchasing GI

sheets, CRCA sheets and Alluminium sheets from the local registered dealers and the sheets were undergoing a lamination process. Thereafter, they were sold in the market. It is the case of Sales Tax Department that it amounts to manufacture, whereas the case of the respondent is that it is not manufacture.

2. Mr. Jaitley, learned Counsel appearing for the respondent has relied upon a judgment of the Apex Court in **State of Maharashtra V/s. Shiv Datt & Sons and anr. reported in 1992 Vol. 84 STC Pg. 497**. That was a case where the manufacturer was removing electrolyte before transporting batteries to dealer. Dealer was immersing plates in electrolyte and charging the batteries for substantial period and thereafter the recharged batteries were sold. The Apex Court has taken a view that this did not amount to manufacture.

3. Mr. Sonpal, learned AGP for the applicant submitted that the definition of "manufacture" as available under the Bombay Sales Tax Act is a wide definition and particularly used the terms such as altering, ornamenting, finishing or otherwise processing appearing in that definition.

4. These provisions were very much applicable in the case of **Shiv Datt (Supra)** and yet the Apex Court has taken a view that the activity therein did not amount to manufacture. In the present case, all that has been done is to provide PVC coating to the sheets purchased by the respondent from the market. There is no other activity which could amount to something special so as to distinguish the facts of the present case and from the case of **Shiv Datt (Supra)**.

5. Mr. Jaitley has drawn our attention to two judgments of the Apex Court in the case of **Teja India Ltd. V/s. Commissioner of Central Excise, Calcutta-II** reported in **2004 (164) E.L.T. 390 (S.C.)** and **Metlex (I) Pvt. Ltd. V/s. Commissioner of C.Ex., New Delhi** reported in **2004 (165) E.L.T. 129 (S.C.)**. The question in both those cases was with respect to the concept of manufacture under the Central Excise, where also similar view has been taken. In any case, we are concerned with the matter under Bombay Sales Tax Act. In our view, it was not possible for the Tribunal to take a view different from the one which the Apex Court has taken in the

case of **Shiv Datt (Supra).**

6. The applicant has sought to raise the question which amounts essentially to reappreciation of evidence and disturbing the finding rendered by the Tribunal. As far as law is concerned, the facts of the present case are similar to that from the case of Shiv Datt before the Apex Court, and the view taken by the Apex Court is followed by the Tribunal. In the circumstances, there is no case in making reference.

7. The application is rejected.

[H.L. GOKHALE, J.]

[V.R. KINGAONKAR, J.]